

**Title 12--DEPARTMENT OF REVENUE
Division 10--Director of Revenue
Chapter 112--Sales/Use Tax—Contractors**

EMERGENCY AMENDMENT

12 CSR 10-112.010 Contractors. The director proposes to amend subsection (3)(D).

PURPOSE: This rule is being amended due to TAFP CCS HCS SS SCS SB 22, enacted by the 94th General Assembly, and to clarify the exemption contained in section 144.062, RSMo, as it relates to fuel and to add exempt entities.

*EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency amendment. This emergency amendment is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency amendment informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of the enactment of TAFP CCS HCS SS SCS SB 22, by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The director believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment filed Aug. ____, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008.*

(3) Basic Application of Tax.

(A) Title Transfer--If title passes from the contractor to the purchaser before attachment of the tangible personal property to real property, the contractor does not pay tax on its purchase, but must collect tax on the sale price of the item. If title passes after the attachment, the contractor is subject to tax on its purchase of the tangible personal property and does not collect tax on its transfer of ownership or title of the item. In general, title passes after installation is complete, unless the contractor and purchaser expressly agree otherwise.

(B) Dual Operator--When a dual operator purchases materials that are specifically identified for use in a contracting job, it should pay tax on the purchase of the materials. Dual operators should present a resale exemption certificate when purchasing materials for inventory that may be used either for resale or contract jobs. When materials are removed from inventory for use in a contracting job, the dual operator should pay sales tax if purchased in-state or use tax if purchased out-of-state based on the original purchase price of the material.

(C) Flow Through Exemptions--Certain exemptions that are based on the ultimate owner's use of an item (such as the exemption for manufacturing machinery) may flow through to the contractor selling and installing the item. To claim an exemption under

these circumstances, the contractor must obtain a signed exemption certificate from the ultimate owner and provide a copy to its supplier.

(D) Flow Through Project Exemptions--A contractor, including subcontractors working for the contractor, constructing, repairing or remodeling facilities for a specific exempt entity, may purchase tax exempt tangible personal property and materials incorporated into or consumed in the project if the exempt entity furnishes to the contractor a project exemption certificate. Tangible personal property and materials that can only be used for one construction, repair or remodeling job which are actually used up in performing the contract are consumed. Examples include sandpaper [*, fuel to run equipment*] and drill bits that are actually used up in the performance of the exempt contract. Items that are not consumed are hand tools, drinking water coolers, hardhats and bulldozers. For purposes of this flow through exemption an exempt entity is limited to:

1. Political subdivisions exempt under Article III section 39(10) of the *Missouri Constitution*;

2. Federal government and its instrumentalities;

3. Religious organizations;

4. Charitable organizations;

5. Elementary and secondary schools, public and private; or

6. Higher education institutions, public and private.

7. Missouri Department of Transportation

8. Jackson County Sports Complex Authority

*AUTHORITY: section 144.270, RSMo [1994] 2000. Original rule filed June 13, 2000, effective Dec. 30, 2000. Emergency amendment filed Aug. ____, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*